

REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claims 1-7, 38-40 and 48-53 have been canceled in this paper. Claims 8, 11-18 and 41 have been amended in this paper. No new claims have been added in this paper. Therefore, claims 8-37 and 41-47 are pending. Of these claims, claims 8-10 have been “withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.” Accordingly, claims 11-37 and 41-47 are under active consideration.

In the outstanding Office Action, the Patent Office requires that Applicants affirm their previous telephonic election of Invention II, claims 11-47. Accordingly, Applicants hereby affirm said election of Invention II, claims 11-47.

The drawings stand objected to for the reason that “Figures 1-6 should be designated by a legend such as –Prior Art– because only that which is old is illustrated.” Accordingly, Applicants are submitting herewith replacement drawing sheets for Figs. 1-6 to which the legend “PRIOR ART” has been added. Accordingly, the foregoing objection to the drawings should be withdrawn.

Claims 11-47 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Bone (4,039,078).” In support of the rejection, the Patent Office states the following:

Bone ‘078 discloses a length of continuously connected fastener stock comprising: first and second side members (60A and 60B); and a plurality of cross-links (60C) interconnecting said first and second side members. Bone ‘078 discloses (column 6, lines 17-21 and lines 29-35) that the side members and the cross-links may take many forms such as oval, triangular, octagonal, circular, etc. See Figures 1-9 embodiments.

With respect to the shape and size of the side members and cross-links it would have been an obvious matter of design choice to modify the shape and size of the side members and cross-links since such a modification would have involved a mere change in shape and size of a component. A change in shape and size is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) and *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claims 11-18, the determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. That is, the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 946, 966 (Fed. Cir. 1985).

A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art.

Insofar as the foregoing rejection pertains to claims 38-40, the rejection is moot in view of Applicants' cancellation herein of claims 38-40. Insofar as the foregoing rejection pertains to claims 11-37 and 41-47, Applicants respectfully traverse the foregoing rejection.

Claim 11, from which claims 16-18 depend, has been amended herein and now recites "[a] length of continuously connected fastener stock fabricated according to a method comprising the steps of:

(a) providing a rotating molding wheel, said rotating molding wheel being provided with a peripheral impression comprising a pair of peripherally-extending side members interconnected by a plurality of cross-links wherein each of said peripherally-extending side members of said peripheral impression is generally semi-circular in transverse cross-section and

wherein each of said cross-links of said peripheral impression is generally semi-circular in transverse cross-section;

(b) extruding molten plastic into the peripheral impression of said rotating molding wheel, with a layer of controlled film overlying the peripheral impression;

(c) allowing the molten plastic to solidify;

(d) using a knife in substantially elliptical contact with the peripheral impression to skive excess plastic from the rotating molding wheel, said knife having a bottom provided with a first cut-out portion aligned with one of said peripherally-extending side members so as to augment the transverse cross-sectional size thereof; and

(e) removing the continuously connected fastener stock thus formed from the rotating molding wheel."

Claim 11 is patentable over Bone for at least the reason that Bone does not teach or suggest a length of continuously connected fastener stock that includes, among other things, cross-links that are generally semi-circular in transverse cross-section and side members that are generally semi-circular in transverse cross-section, at least one of said side members having an augmented transverse cross-sectional size.

Instead, Bone discloses in Figs. 1-4 and 49-50 thereof a first type of fastener attachment stock, said first type of fastener attachment stock being made by punching or forming apertures in an extruded sheet of plastic (see col. 5, lines 28-30, of Bone). Because of its method of fabrication, this first type of fastener attachment stock has rectangular side members and rectangular cross-links. Bone also discloses in Figs. 5-8 and 51-54 a second type of fastener attachment stock, said second

type of fastener attachment stock being made by injection molding and then welding together separately molded segments. Bone discloses that this second type of fastener attachment stock has round side members and round cross-links (see col.5, lines 63-65, of Bone) but may have round cross-links and rectangular side members or vice versa (see col. 6, lines 17-21, of Bone).

However, in view of the particular fabrication methods used to make the two types of Bone fastener attachment stocks, there would have been no reason for one of ordinary skill in the art to have been motivated to modify the structure of the Bone fastener stocks to arrive at the particular structure possessed by the claimed fastener stock, namely, having generally semi-circular cross-links and side members that are generally semi-circular in transverse cross-section, with at least one of said side members having an augmented transverse cross-sectional size.

Independent claims 12 and 14, from which claims 13 and 15, respectively, depend, are patentable over Bone for at least the same types of reasons given above in connection with claim 11.

Independent claim 19, from which claims 20-37 depend, is patentable over Bone for at least the reason that Bone does not teach or suggest fastener stock comprising, among other things, (i) first and second side members; and (ii) cross-links each having a flat surface and an arcuate surface (iii) wherein the first side member extends transversely beyond the flat surface of the cross-links. Instead, as noted above, Bone discloses two types of fastener stock. In the first type of fastener stock, the cross-links are rectangular and, therefore, do not include an arcuate surface. In the second type of fastener stock, the cross-links are said to be round or rectangular (or oval or triangular or octagonal) but do not have both a flat surface and an arcuate surface.

Independent claim 41, from which claim 42 depends, is patentable over Bone for at least the reason that Bone does not teach or suggest fastener stock comprising, among other things, (i) first

and second side members; and (ii) cross-links each having a flat surface; (iii) wherein the first side member is generally circularly shaped with at least one flattened surface in transverse cross-section, said first side extending transversely beyond the flat surface of the cross-links with an arcuate surface.

Independent claim 43, from which claims 44-47 depend, is patentable over Bone for at least the reason that Bone does not teach or suggest fastener stock comprising, among other things, (i) first and second side members; and (ii) cross-links that asymmetrically bisect said first and second side members.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

In conclusion, it is respectfully submitted that the present application is in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is

required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 22, 2004.

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